

BRITTON, J.

NOVEMBER 24TH, 1906.

## TRIAL.

## PREST v. PREST.

*Lunatic—Moneys Expended in Maintenance of Lunatic not so Found—Right to Recover—Ability to Contract—Necessaries—Evidence.*

Action to recover moneys expended by plaintiff in the care and maintenance of defendant, a supposed lunatic, tried without a jury at Belleville.

E. G. Porter, Belleville, for plaintiff.

Malcolm Wright, Belleville, for defendant.

BRITTON, J.:—Plaintiff and defendant are brothers. Defendant is the owner of a farm of 55 acres . . . but he has not done any work worth mentioning upon his farm or elsewhere for a score of years. The father of plaintiff and defendant has been dead about 20 years. Defendant became more or less incapable during the lifetime of his father. After the father's death, defendant lived with and was cared for by his mother and brother John, and by John after the mother's death. About 1st July, 1896, John removed from Huntingdon, and Mrs. Wiggins, a sister, took charge of defendant. About the middle of April, 1898, an arrangement was made by Mrs. Wiggins for defendant, or by defendant himself, with plaintiff, that plaintiff would take defendant's farm and maintain defendant. It is not pretended that any promise by defendant to pay for his maintenance arises by implication, which as between strangers would arise. It is a case in which an agreement must be proved. . . . It is not suggested that plaintiff was either able or willing to take care of and maintain defendant without compensation, but it is alleged that there was the express bargain or arrangement between Mrs. Wiggins, with the approval of other members of the family, on the one side, and plaintiff on the other, that plaintiff should simply get the use of defendant's farm for the care and service rendered to defendant.